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182957—33

In the Supreme Court of the United States

OCTOBER TERM, 1933

No. —

MARSHALL S. REYNOLDS, INDIVIDUALLY AND AS COLLECTOR of Internal Revenue, petitioner

v.

RICHARD F. COOPER

No. —

MARSHALL S. REYNOLDS, INDIVIDUALLY AND AS COLLECTOR of Internal Revenue, petitioner

v.

BARBARA V. COOPER

No. —

MARSHALL S. REYNOLDS, INDIVIDUALLY AND AS COLLECTOR of Internal Revenue, petitioner

v.

RICHARD F. COOPER AND BARBARA V. COOPER

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

The Solicitor General, on behalf of Marshall S. Reynolds, Collector of Internal Revenue, prays

that writs of certiorari issue to review the judgments of the Circuit Court of Appeals for the Tenth Circuit in the above-entitled causes entered April 3, 1933, affirming judgments of the District Court for the District of Wyoming.

OPINIONS BELOW

The memorandum opinion of the District Court (R. 24–29) is reported in 60 F. (2d) 650. The opinion of the Circuit Court of Appeals is reported in 64 F. (2d) 644.

JURISDICTION

The judgments sought to be reviewed were entered April 3, 1933. The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether beneficiaries of a trust are entitled to a deduction from trust income for depletion of a mineral property constituting the corpus of the trust.

STATEMENT

These three cases were tried together by the District Court without a jury, pursuant to a stipulation (R. 23–24).[1] The facts were stipulated (R. 36–55), and may be summarized as follows:

The respondents are the beneficiaries of a trust created by the will of their father, A. F. T. Cooper,

[1] All references will be made to the record in the *Richard F. Cooper* case.

who died December 8, 1918 (R. 37). Under this will, together with a codicil (R. 48–50), the residuary estate was left to trustees. The trustees were directed by clause 14 of the will (R. 44–45), as amended by clause 2 of the codicil (R. 49), to convert the property into money at such time and in such manner as they should think fit, with full power to postpone the sale and to manage the property in the meantime. After the payment of 21,000 pounds, as directed by the will, the trustees were to pay one-half of the balance of the residue to Richard Francis Cooper absolutely, one-fourth to John Hartshorn Cooper absolutely, and one-fourth to Barbara Violet Cooper.

Part of the residuary estate consisted of certain oil and gas land in Wyoming, which the testator had leased to the Ohio Oil Company on October 9, 1917, for a period of twenty years, with the privilege of an extension for a further period of twenty years. The lease provided for royalty payments to the lessor beginning at 12½% in 1917 and increasing to 20% in 1927 and thereafter. (R. 37, 50–55.)

Prior to 1923, the trustees had paid the testator's debts and the legacies provided by the will, and had carried out the direction with respect to the first 21,000 pounds of the residue, so that during 1923 and the subsequent years here involved the ultimate residuary clause of the will and codicil was operative. Prior to September 13, 1923, Richard F. Cooper received one-half of the distributions made by the trustees, the estate of John H. Cooper

received one-fourth and Barbara V. Cooper received one-fourth. Of distributions made after September 23, 1923, through 1927, Richard F. Cooper received one-half, plus one-eighth (as devisee under the will of John H. Cooper), and Barbara V. Cooper received the remaining three-eighths. (R. 37–38.)

In their information returns of trust income for 1923 to 1927, inclusive, the trustees claimed deductions for depletion and the beneficiaries in reporting their distributive shares of the trust income in their individual returns took this depletion into account (R. 38–39).

The Commissioner determined that the beneficiaries were not entitled to have their distributive shares of income reduced by a deduction for depletion and determined deficiencies accordingly (R. 39). After payment of the taxes thus found due, claims for refund were filed, and more than six months thereafter these suits to recover the additional taxes were commenced by the beneficiaries. The District Court gave judgment for the plaintiffs and the Circuit Court of Appeals affirmed this decision.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the respondents were entitled to a deduction for depletion of the corpus of the

[2] The amount of depletion allowable, if any is allowable, is not in dispute (R. 39).

trust from which they received distributions of income.

2. In failing to hold that there is no statutory authority in the Revenue Acts of 1921, 1924, and 1926 for the allowance of a deduction for depletion from trust income received by beneficiaries of a trust.

REASONS FOR GRANTING THE WRITS

The question presented by these cases is closely related to that involved in *Commissioner of Internal Revenue* v. *Otto H. Falk, et al., Executors of the estate of Charles F. Pfister, deceased, etc.*, No. —, October Term, 1933, in which a petition for a writ of certiorari is being filed. The reasons relied upon as justifying the issuance of the writ are presented in that petition, to which this Court is respectfully referred.

Wherefore, it is submitted that this petition for writs of certiorari should be granted.

J. CRAWFORD BIGGS,
Solicitor General.

JULY 1933.

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